

FENWICK & WEST LLP  
ATTORNEYS AT LAW  
SAN FRANCISCO

KATHRYN J. FRITZ (SBN 148200)  
RACHAEL G. SAMBERG (SBN 223694)  
FENWICK & WEST LLP  
275 Battery Street, Suite 1600  
San Francisco, CA 94111  
Telephone: (415) 875-2300  
Facsimile: (415) 281-1350  
Email: kfritz@fenwick.com

KAREN P. ANDERSON (SBN 193618)  
FENWICK & WEST LLP  
Silicon Valley Center  
801 California Street  
Mountain View, CA 94041  
Telephone: (650) 988-8500  
Facsimile: (650) 938-5200  
Email: kanderson@fenwick.com

Attorneys for Plaintiff and Counterclaim  
Defendant PROTEGO NETWORKS, INC.,  
now Protego Networks LLC, and  
Counterclaim Defendants PARTHA  
BHATTACHARYA, IMIN LEE and YU  
LIAO

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

PROTEGO NETWORKS, INC., a Delaware  
corporation,

Plaintiff,

v.

DANIEL N. ZENCHELSKY,

Defendant.

DANIEL N. ZENCHELSKY,

Counterclaimant,

v.

PROTEGO NETWORKS LLC, PARTHA  
BHATTACHARYA, IMIN LEE, AND  
YU LIAO,

Counterclaim Defendants.

Case No. C05-00464 MJJ

**REPLY TO SECOND AMENDED  
COUNTERCLAIM BY  
COUNTERCLAIM DEFENDANT  
YU LIAO**

**DEMAND FOR JURY TRIAL**

LIAO REPLY TO SACC  
CASE No. C05-00464 MJJ

Counterclaim Defendant Yu Liao hereby replies to the Second Amended Counterclaim (“SACC”) of Counterclaimant Daniel N. Zenchelsky as follows:

**PARTIES**

1. Mr. Liao is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 1 of the SACC and on that basis denies each and every averment contained therein, except Mr. Liao admits that he is informed and believes that Mr. Zenchelsky is an individual who resides in New Jersey.

2. Mr. Liao denies each and every averment contained in paragraph 2 of the SACC, except Mr. Liao admits that he is informed and believes that Protego Networks LLC is a Delaware limited liability company formerly known as Protego Networks, Inc.

3. Mr. Liao denies each and every averment contained in paragraph 3 of the SACC, except Mr. Liao admits that Imin Lee is an individual.

4. Mr. Liao denies each and every averment contained in paragraph 4 of the SACC, except Mr. Liao admits that Partha Bhattacharya is an individual.

5. Mr. Liao denies each and every averment contained in paragraph 5 of the SACC, except Mr. Liao admits that he is an individual and that his business address is 1600 Amphitheatre Parkway, Mountain View, CA 94043.

**JURISDICTION AND VENUE**

6. Mr. Liao neither admits nor denies the averments contained in paragraph 6 of the SACC because those averments are conclusions of law to which no response is required; to the extent that those averments may be deemed averments of fact, Mr. Liao denies them, except Mr. Liao admits that jurisdiction and venue are proper in this district.

**BACKGROUND**

7. Mr. Liao denies each and every averment contained in paragraph 7 of the SACC.

8. Mr. Liao is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 8 of the SACC and on that basis denies each and every averment contained therein.

1           9.     Mr. Liao is without knowledge or information sufficient to form a belief as to the  
2 truth of the averments contained in paragraph 9 of the SACC and on that basis denies each and  
3 every averment contained therein.

4           10.    Mr. Liao is without knowledge or information sufficient to form a belief as to the  
5 truth of the averments contained in paragraph 10 of the SACC and on that basis denies each and  
6 every averment contained therein.

7           11.    Mr. Liao is without knowledge or information sufficient to form a belief as to the  
8 truth of the averments contained in paragraph 11 of the SACC and on that basis denies each and  
9 every averment contained therein.

10          12.    Mr. Liao is without knowledge or information sufficient to form a belief as to the  
11 truth of the averments contained in paragraph 12 of the SACC and on that basis denies each and  
12 every averment contained therein.

13          13.    Mr. Liao is without knowledge or information sufficient to form a belief as to the  
14 truth of the averments contained in paragraph 13 of the SACC and on that basis denies each and  
15 every averment contained therein.

16          14.    Mr. Liao is without knowledge or information sufficient to form a belief as to the  
17 truth of the averments contained in paragraph 14 of the SACC and on that basis denies each and  
18 every averment contained therein.

19          15.    Mr. Liao is without knowledge or information sufficient to form a belief as to the  
20 truth of the averments contained in paragraph 15 of the SACC and on that basis denies each and  
21 every averment contained therein.

22          16.    Mr. Liao is without knowledge or information sufficient to form a belief as to the  
23 truth of the averments contained in paragraph 16 of the SACC and on that basis denies each and  
24 every averment contained therein.

25          17.    Mr. Liao is without knowledge or information sufficient to form a belief as to the  
26 truth of the averments contained in paragraph 17 of the SACC and on that basis denies each and  
27 every averment contained therein.  
28

1           18.     Mr. Liao is without knowledge or information sufficient to form a belief as to the  
2 truth of the averments contained in paragraph 18 of the SACC and on that basis denies each and  
3 every averment contained therein

4           19.     Mr. Liao is without knowledge or information sufficient to form a belief as to the  
5 truth of the averments contained in paragraph 19 of the SACC and on that basis denies each and  
6 every averment contained therein.

7           20.     Mr. Liao is without knowledge or information sufficient to form a belief as to the  
8 truth of the averments contained in paragraph 20 of the SACC and on that basis denies each and  
9 every averment contained therein.

10          21.     Mr. Liao denies each and every averment contained in paragraph 21 of the SACC.

11          22.     Mr. Liao is without knowledge or information sufficient to form a belief as to the  
12 truth of the averments contained in paragraph 22 of the SACC and on that basis denies each and  
13 every averment contained therein.

14          23.     Mr. Liao is without knowledge or information sufficient to form a belief as to the  
15 truth of the averments contained in paragraph 23 of the SACC and on that basis denies each and  
16 every averment contained therein.

17          24.     Mr. Liao is without knowledge or information sufficient to form a belief as to the  
18 truth of the averments contained in paragraph 24 of the SACC and on that basis denies each and  
19 every averment contained therein.

20          25.     Mr. Liao is without knowledge or information sufficient to form a belief as to the  
21 truth of the averments contained in paragraph 25 of the SACC and on that basis denies each and  
22 every averment contained therein.

23          26.     Mr. Liao is without knowledge or information sufficient to form a belief as to the  
24 truth of the averments contained in paragraph 26 of the SACC and on that basis denies each and  
25 every averment contained therein.

26          27.     Mr. Liao is without knowledge or information sufficient to form a belief as to the  
27 truth of the averments contained in paragraph 27 of the SACC and on that basis denies each and  
28 every averment contained therein.

- 1           28.     Mr. Liao denies each and every averment contained in paragraph 28 of the SACC.
- 2           29.     Mr. Liao is without knowledge or information sufficient to form a belief as to the
- 3 truth of the averments contained in paragraph 29 of the SACC and on that basis denies each and
- 4 every averment contained therein.
- 5           30.     Mr. Liao is without knowledge or information sufficient to form a belief as to the
- 6 truth of the averments contained in paragraph 30 of the SACC and on that basis denies each and
- 7 every averment contained therein.
- 8           31.     Mr. Liao denies each and every averment contained in paragraph 31 of the SACC.
- 9           32.     Mr. Liao denies each and every averment contained in paragraph 32 of the SACC,
- 10 except he is informed and believes that on June 20, 2002, Protego Networks, Inc. was
- 11 incorporated in Delaware.
- 12           33.     Mr. Liao is without knowledge or information sufficient to form a belief as to the
- 13 truth of the averments contained in paragraph 33 of the SACC and on that basis denies each and
- 14 every averment contained therein.
- 15           34.     Mr. Liao is without knowledge or information sufficient to form a belief as to the
- 16 truth of the averments contained in paragraph 34 of the SACC and on that basis denies each and
- 17 every averment contained therein.
- 18           35.     Mr. Liao is without knowledge or information sufficient to form a belief as to the
- 19 truth of the averments contained in paragraph 35 of the SACC and on that basis denies each and
- 20 every averment contained therein.
- 21           36.     Mr. Liao denies each and every averment contained in paragraph 36 of the SACC.
- 22           37.     Mr. Liao denies each and every averment contained in paragraph 37 of the SACC.
- 23           38.     Mr. Liao denies each and every averment contained in paragraph 38 of the SACC.
- 24           39.     Mr. Liao denies each and every averment contained in paragraph 39 of the SACC.
- 25           40.     Mr. Liao is without knowledge or information sufficient to form a belief as to the
- 26 truth of the averments contained in paragraph 40 of the SACC and on that basis denies each and
- 27 every averment contained therein.
- 28

1           41.     Mr. Liao is without knowledge or information sufficient to form a belief as to the  
2 truth of the averments contained in paragraph 41 of the SACC and on that basis denies each and  
3 every averment contained therein.

4           42.     Mr. Liao is without knowledge or information sufficient to form a belief as to the  
5 truth of the averments contained in paragraph 42 of the SACC and on that basis denies each and  
6 every averment contained therein.

7           43.     Mr. Liao is without knowledge or information sufficient to form a belief as to the  
8 truth of the averments contained in paragraph 43 of the SACC and on that basis denies each and  
9 every averment contained therein.

10          44.     Mr. Liao is without knowledge or information sufficient to form a belief as to the  
11 truth of the averments contained in paragraph 44 of the SACC and on that basis denies each and  
12 every averment contained therein.

13          45.     Mr. Liao denies each and every averment contained in paragraph 45 of the SACC.

14          46.     Mr. Liao denies each and every averment contained in paragraph 46 of the SACC.

15          47.     Mr. Liao denies each and every averment contained in paragraph 47 of the SACC.

16          48.     Mr. Liao is without knowledge or information sufficient to form a belief as to the  
17 truth of the averments contained in paragraph 48 of the SACC and on that basis denies each and  
18 every averment contained therein, except Mr. Liao admits that he is informed and believes that on  
19 December 20, 2004, Cisco Systems, Inc. announced its intention to acquire Protego Networks,  
20 Inc. for \$65 million.

21          49.     Mr. Liao is without knowledge or information sufficient to form a belief as to the  
22 truth of the averments contained in paragraph 49 of the SACC and on that basis denies each and  
23 every averment contained therein, except Mr. Liao admits that Exhibit B of the SACC is a copy  
24 of United States Patent Application Publication No. US 2004/0260763 A1 published on  
25 December 23, 2004 (“the ‘763 patent application”).

26          50.     Mr. Liao denies each and every averment contained in paragraph 50 of the SACC.  
27  
28

1           51.     Mr. Liao denies each and every averment contained in paragraph 51 of the SACC,  
2 except Mr. Liao admits that he is informed and believes that the '763 patent application was filed  
3 on June 23, 2003, and published on December 23, 2004.

4           52.     Mr. Liao denies each and every averment contained in paragraph 52 of the SACC.

5           53.     Mr. Liao denies each and every averment contained in paragraph 53 of the SACC.

6                                   **FIRST CAUSE OF ACTION**

7                                   **(Intentional Fraud Based Upon Suppression of Fact)**

8                                   (Against Protego and Lee)

9           54.     Replying to paragraph 54 of the SACC, Mr. Liao incorporates by reference his  
10 responses to each and every averment in the SACC as though fully set forth herein.

11           55.     Mr. Liao neither admits nor denies the averments contained in paragraph 55 of the  
12 SACC because those averments are not against him; to the extent that those averments may be  
13 deemed to be against him, Mr. Liao denies them.

14           56.     Mr. Liao neither admits nor denies the averments contained in paragraph 56 of the  
15 SACC because those averments are not against him; to the extent that those averments may be  
16 deemed to be against him, Mr. Liao denies them.

17           57.     Mr. Liao neither admits nor denies the averments contained in paragraph 57 of the  
18 SACC because those averments are not against him; to the extent that those averments may be  
19 deemed to be against him, Mr. Liao denies them.

20           58.     Mr. Liao neither admits nor denies the averments contained in paragraph 58 of the  
21 SACC because those averments are not against him; to the extent that those averments may be  
22 deemed to be against him, Mr. Liao denies them.

23           59.     Mr. Liao neither admits nor denies the averments contained in paragraph 59 of the  
24 SACC because those averments are not against him; to the extent that those averments may be  
25 deemed to be against him, Mr. Liao denies them.

26           60.     Mr. Liao neither admits nor denies the averments contained in paragraph 60 of the  
27 SACC because those averments are not against him; to the extent that those averments may be  
28 deemed to be against him, Mr. Liao denies them.

4           62.       Mr. Liao neither admits nor denies the averments contained in paragraph 62 of the  
5       SACC because those averments are not against him; to the extent that those averments may be  
6       deemed to be against him, Mr. Liao denies them.

63. Mr. Liao neither admits nor denies the averments contained in paragraph 63 of the  
SACC because those averments are not against him; to the extent that those averments may be  
deemed to be against him, Mr. Liao denies them.

10           64.     Mr. Liao neither admits nor denies the averments contained in paragraph 64 of the  
11     SACC because those averments are not against him; to the extent that those averments may be  
12     deemed to be against him, Mr. Liao denies them.

**(Intentional Fraud Based Upon Affirmative Misrepresentation)**

65. Replying to paragraph 65 of the SACC, Mr. Liao incorporates by reference his responses to each and every averment in the SACC as though fully set forth herein.

18           66.     Mr. Liao neither admits nor denies the averments contained in paragraph 66 of the  
19     SACC because those averments are not against him; to the extent that those averments may be  
20     deemed to be against him, Mr. Liao denies them.

21           67.     Mr. Liao neither admits nor denies the averments contained in paragraph 67 of the  
22     SACC because those averments are not against him; to the extent that those averments may be  
23     deemed to be against him, Mr. Liao denies them.

24           68.     Mr. Liao neither admits nor denies the averments contained in paragraph 68 of the  
25     SACC because those averments are not against him; to the extent that those averments may be  
26     deemed to be against him, Mr. Liao denies them.



1           69.     Mr. Liao neither admits nor denies the averments contained in paragraph 69 of the  
2     SACC because those averments are not against him; to the extent that those averments may be  
3     deemed to be against him, Mr. Liao denies them.

4           70.     Mr. Liao neither admits nor denies the averments contained in paragraph 70 of the  
5     SACC because those averments are not against him; to the extent that those averments may be  
6     deemed to be against him, Mr. Liao denies them.

7           71.     Mr. Liao neither admits nor denies the averments contained in paragraph 71 of the  
8     SACC because those averments are not against him; to the extent that those averments may be  
9     deemed to be against him, Mr. Liao denies them.

10          72.     Mr. Liao neither admits nor denies the averments contained in paragraph 72 of the  
11     SACC because those averments are not against him; to the extent that those averments may be  
12     deemed to be against him, Mr. Liao denies them.

13          73.     Mr. Liao neither admits nor denies the averments contained in paragraph 73 of the  
14     SACC because those averments are not against him; to the extent that those averments may be  
15     deemed to be against him, Mr. Liao denies them.

16          74.     Mr. Liao neither admits nor denies the averments contained in paragraph 74 of the  
17     SACC because those averments are not against him; to the extent that those averments may be  
18     deemed to be against him, Mr. Liao denies them.

19          75.     Mr. Liao neither admits nor denies the averments contained in paragraph 75 of the  
20     SACC because those averments are not against him; to the extent that those averments may be  
21     deemed to be against him, Mr. Liao denies them.

22                   **THIRD CAUSE OF ACTION**

23                   **(Fraud Based Upon Negligent Misrepresentation)**

24                   (Against Protego and Lee)

25          76.     Replying to paragraph 76 of the SACC, Mr. Liao incorporates by reference his  
26     responses to each and every averment in the SACC as though fully set forth herein.

1           77.     Mr. Liao neither admits nor denies the averments contained in paragraph 77 of the  
2     SACC because those averments are not against him; to the extent that those averments may be  
3     deemed to be against him, Mr. Liao denies them.

4           78.     Mr. Liao neither admits nor denies the averments contained in paragraph 78 of the  
5     SACC because those averments are not against him; to the extent that those averments may be  
6     deemed to be against him, Mr. Liao denies them.

7           79.     Mr. Liao neither admits nor denies the averments contained in paragraph 79 of the  
8     SACC because those averments are not against him; to the extent that those averments may be  
9     deemed to be against him, Mr. Liao denies them.

10          80.     Mr. Liao neither admits nor denies the averments contained in paragraph 80 of the  
11     SACC because those averments are not against him; to the extent that those averments may be  
12     deemed to be against him, Mr. Liao denies them.

13          81.     Mr. Liao neither admits nor denies the averments contained in paragraph 81 of the  
14     SACC because those averments are not against him; to the extent that those averments may be  
15     deemed to be against him, Mr. Liao denies them.

16                   **FOURTH CAUSE OF ACTION**

17                   **(Constructive Fraud)**

18                   (Against Protego and Lee)

19          82.     Replying to paragraph 82 of the SACC, Mr. Liao incorporates by reference his  
20     responses to each and every averment in the SACC as though fully set forth herein.

21          83.     Mr. Liao neither admits nor denies the averments contained in paragraph 83 of the  
22     SACC because those averments are not against him; to the extent that those averments may be  
23     deemed to be against him, Mr. Liao denies them.

24          84.     Mr. Liao neither admits nor denies the averments contained in paragraph 84 of the  
25     SACC because those averments are not against him; to the extent that those averments may be  
26     deemed to be against him, Mr. Liao denies them.

4           86.       Mr. Liao neither admits nor denies the averments contained in paragraph 86 of the  
5       SACC because those averments are not against him; to the extent that those averments may be  
6       deemed to be against him, Mr. Liao denies them.

7            87.        Mr. Liao neither admits nor denies the averments contained in paragraph 87 of the  
8        SACC because those averments are not against him; to the extent that those averments may be  
9        deemed to be against him, Mr. Liao denies them.

10           88.     Mr. Liao neither admits nor denies the averments contained in paragraph 88 of the  
11     SACC because those averments are not against him; to the extent that those averments may be  
12     deemed to be against him, Mr. Liao denies them.

89. Mr. Liao neither admits nor denies the averments contained in paragraph 89 of the SACC because those averments are not against him; to the extent that those averments may be deemed to be against him, Mr. Liao denies them.

16           90.     Mr. Liao neither admits nor denies the averments contained in paragraph 90 of the  
17     SACC because those averments are not against him; to the extent that those averments may be  
18     deemed to be against him, Mr. Liao denies them.

20 (Conversion)

21 (Against Protego, Bhattacharya, Lee, and Liao)

91. Replying to paragraph 91 of the SACC, Mr. Liao incorporates by reference his responses to each and every averment in the SACC as though fully set forth herein.

24 || 92. Mr. Liao denies each and every averment contained in paragraph 92 of the SACC.

25 || 93. Mr. Liao denies each and every averment contained in paragraph 93 of the SACC.

26 || 94. Mr. Liao denies each and every averment contained in paragraph 94 of the SACC.

27 || 95. Mr. Liao denies each and every averment contained in paragraph 95 of the SACC.

28      96.      Mr. Liao denies each and every averment contained in paragraph 96 of the SACC.

**SIXTH CAUSE OF ACTION**

**(Breach of Implied-in-Fact Contract)**

(Against Protego and Lee)

97. Replying to paragraph 97 of the SACC, Mr. Liao incorporates by reference his responses to each and every averment in the SACC as though fully set forth herein.

98. Mr. Liao neither admits nor denies the averments contained in paragraph 98 of the SACC because those averments are not against him; to the extent that those averments may be deemed to be against him, Mr. Liao denies them.

99. Mr. Liao neither admits nor denies the averments contained in paragraph 99 of the SACC because those averments are not against him; to the extent that those averments may be deemed to be against him, Mr. Liao denies them.

100. Mr. Liao neither admits nor denies the averments contained in paragraph 100 of the SACC because those averments are not against him; to the extent that those averments may be deemed to be against him, Mr. Liao denies them.

**SEVENTH CAUSE OF ACTION**

**(Copyright Infringement**

**17 U.S.C. § 501, *et seq.*)**

(Against Protego, Bhattacharya, Lee, and Liao)

101. Replying to paragraph 101 of the SACC, Mr. Liao incorporates by reference his responses to each and every averment in the SACC as though fully set forth herein.

102. Mr. Liao denies that he has infringed any copyright for which Mr. Zenchelsky may have registered or applied; Mr. Liao is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 102 of the SACC and on that basis denies each and every averment contained therein.

103. Mr. Liao is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 103 of the SACC and on that basis denies each and every averment contained therein.

3                    105.    Mr. Liao denies each and every averment contained in paragraph 105 of the  
4    SACC.

106. Mr. Liao denies each and every averment contained in paragraph 106 of the  
SACC, except Mr. Liao admits that the SACC purports to seek a permanent injunction.

107. Mr. Liao denies each and every averment contained in paragraph 107 of the  
SACC, except Mr. Liao admits that the SACC purports to seek an accounting and certain  
damages, all of which Mr. Liao denies.

### (Misappropriation of Scientific Ideas)

13           108.   Replying to paragraph 108 of the SACC, Mr. Liao incorporates by reference his  
14   responses to each and every averment in the SACC as though fully set forth herein.

15            109.    Mr. Liao is without knowledge or information sufficient to form a belief as to the  
16    truth of the averments contained in paragraph 109 of the SACC and on that basis denies each and  
17    every averment contained therein.

18                    110.    Mr. Liao denies each and every averment contained in paragraph 110 of the  
19    SACC.

111. Mr. Liao denies each and every averment contained in paragraph 111 of the  
SACC.

112. Mr. Liao denies each and every averment contained in paragraph 112 of the  
SACC.

24            113. Mr. Liao denies each and every averment contained in paragraph 113 of the  
25            SACC.

26           114. Mr. Liao denies each and every averment contained in paragraph 114 of the  
27   SACC.

28 115. Any allegations in the SACC not expressly admitted herein are hereby denied.

**PRAYER FOR RELIEF**

116. Counterclaim Defendant Yu Liao denies that Mr. Zenchelsky is entitled to any relief against any of them.

**AFFIRMATIVE DEFENSES**

As separate and affirmative defenses to Mr. Zenchelsky's SACC and to each cause of action, claim, and allegation contained therein, Counterclaim Defendant Yu Liao states as follows:

**FIRST AFFIRMATIVE DEFENSE**

(Failure To State a Cause of Action)

117. Each purported cause of action in the SACC fails to state facts sufficient to constitute a cause of action against Mr. Liao.

**SECOND AFFIRMATIVE DEFENSE**

(Statutes of Limitations)

118. Each cause of action in the SACC is barred by the applicable statutes of limitations.

**THIRD AFFIRMATIVE DEFENSE**

(Fraud)

119. Each cause of action in the SACC is barred by Mr. Zenchelsky's fraudulent conduct.

**FOURTH AFFIRMATIVE DEFENSE**

(Bad Faith)

120. Each cause of action in the SACC is barred because Mr. Zenchelsky is prosecuting his claims in bad faith and for an improper purpose. Mr. Zenchelsky's claims are frivolous and entitle Mr. Liao to an award of reasonable expenses and attorneys' fees.

**FIFTH AFFIRMATIVE DEFENSE**

(Lack of Standing)

121. Mr. Zenchelsky lacks standing to assert the claims in the SACC.

**SIXTH AFFIRMATIVE DEFENSE**

(Unclean Hands)

122. Each cause of action in the SACC is barred by the doctrine of unclean hands.

**SEVENTH AFFIRMATIVE DEFENSE**

(Waiver)

123. Each cause of action in the SACC has been waived in whole or in part, and, to the extent waived, it is barred.

**EIGHTH AFFIRMATIVE DEFENSE**

(Estoppel)

124. Mr. Zenchelsky is estopped by its conduct and by operation of law from asserting the allegations contained in each cause of action in the SACC and from maintaining this action.

**NINTH AFFIRMATIVE DEFENSE**

(Laches)

125. Each cause of action in the SACC is barred by the doctrine of laches.

**TENTH AFFIRMATIVE DEFENSE**

(Acquiescence)

126. Each cause of action in the SACC is barred by the doctrine of acquiescence.

**ELEVENTH AFFIRMATIVE DEFENSE**

(Consent)

127. Each cause of action in the SACC is barred because the Mr. Zenchelsky consented to and approved all the acts and omissions about which he now complains.

**TWELFTH AFFIRMATIVE DEFENSE**

(Failure To Mitigate)

128. Mr. Zenchelsky has failed, and continues to fail, to act reasonably to mitigate the damages he alleges in this action.

**THIRTEENTH AFFIRMATIVE DEFENSE**

(Statute of Frauds)

129. The SACC's cause of action for "Breach of Implied-in-Fact Contract" is barred by the Statute of Frauds.

**FOURTEENTH AFFIRMATIVE DEFENSE**

(Lack of Originality)

130. Mr. Zenchelsky's cause of action for copyright infringement is barred for lack of originality.

**FIFTEENTH AFFIRMATIVE DEFENSE**

(Invalidity of Copyright Registrations)

131. Mr. Zenchelsky's cause of action for copyright infringement is barred because his copyright registrations are invalid.

**SIXTEENTH AFFIRMATIVE DEFENSE**

(Preemption)

132. Mr. Zenchelsky's causes of action for conversion and "Misappropriation of Scientific Ideas" are barred on the basis of preemption.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

(Independent Creation)

133. Each cause of action in the SACC is barred by the doctrine of independent creation.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

(Lack of Subject-Matter Jurisdiction)

134. The Court lacks subject matter jurisdiction over this action.

WHEREFORE, Counterclaim Defendant Yu Liao prays for judgment on the SACC as follows:

1. That Mr. Zenchelsky take nothing by his SACC;
2. That the SACC be dismissed with prejudice;
3. For costs of suit, including reasonable attorneys' fees; and



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

4. For such other and further relief as this Court may deem just and proper.

Dated: January 20, 2006

FENWICK & WEST LLP

By: /s/ Kathryn J. Fritz  
Kathryn J. Fritz

Attorneys for Plaintiff and Counterclaim Defendant  
PROTEGO NETWORKS, INC., now Protego  
Networks LLC, and Counterclaim Defendants  
PARTHA BHATTACHARYA, IMIN LEE and  
YU LIAO

**DEMAND FOR JURY TRIAL**

Counterclaim Defendant Yu Liao hereby demands a trial by jury on all claims for relief so triable.

Dated: January 20, 2006

FENWICK & WEST LLP

By: /s/ Kathryn J. Fritz  
Kathryn J. Fritz

Attorneys for Plaintiff and Counterclaim Defendant  
PROTEGO NETWORKS, INC., now Protego  
Networks LLC, and Counterclaim Defendants  
PARTHA BHATTACHARYA, IMIN LEE and  
YU LIAO

**CERTIFICATION OF INTERESTED PARTIES**

Pursuant to Civil L.R. 3-16, the undersigned certifies that the following listed persons, associations of persons, firms, partnerships, corporations (including parent corporations), or other entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding; or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding:

Protego Networks LLC, the successor to Protego Networks, Inc.;

Cisco Systems, Inc., the sole member of Protego Networks LLC; and

Various institutional and individual escrow holders.

Dated: January 20, 2006

FENWICK & WEST LLP

By: /s/ Kathryn J. Fritz  
Kathryn J. Fritz

Attorneys for Plaintiff and Counterclaim Defendant  
PROTEGO NETWORKS, INC., now Protego  
Networks LLC, and Counterclaim Defendants  
PARTHA BHATTACHARYA, IMIN LEE and  
YU LIAO

23673/00403/SF/5159272.4